97TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 97-929

MISCELLANEOUS REVENUE ACT OF 1982

OCTOBER 1, 1982.—Ordered to be printed

Mr. ROSTENKOWSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 4717]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 4717) to delay for one year the effective date of certain provisions recognizing gain on certain dispositions of LIFO inventories, to make adjustments in the net operating loss carryback and carryforward rules for the Federal National Mortgage Association, and to require information returns with respect to safe harbor leases, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate and agree to the same with amendments as follows:

In lieu of the matter proposed to be inserted by the House amendment to the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Miscellaneous Revenue Act of 1982".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

99-244 O

H783-24

TITLE I—TAX PROVISIONS

SEC. 101. REDUCTION OF LIFO RECAPTURE AMOUNT WITH RESPECT TO CERTAIN PLANS OF LIQUIDATION ADOPTED DURING 1982.

Subsection (b) of section 403 of the Crude Oil Windfall Profit Tax Act of 1980 (relating to effective date for recognition of gain on certain dispositions of LIFO inventories) is amended by adding at the end thereof the following new paragraph:

"(4) PLANS OF LIQUIDATION ADOPTED DURING 1982.—

"(A) IN GENERAL.—If—

"(i) a corporation adopts a plan of liquidation during 1982, and

"(ii) such liquidation is completed before January 1, 1984,

then the LIFO recapture amount taken into account with respect to such liquidation under the amendments made by paragraphs (1) and (2) shall be reduced (but not below zero) by $1,000,000.

"(B) MORE THAN 1 PLAN OF LIQUIDATION.—If a corporation (or group of corporations treated as 1 corporation under subparagraph (C)) has more than 1 liquidation which qualifies under subparagraph (A), the dollar amount under such subparagraph shall apply to all such liquidations in the order in which the distributions, sales, and exchanges occur until such dollar amount is used up.

"(C) APPLICATION TO MEMBERS OF CONTROLLED GROUP.—

"(i) IN GENERAL.—For purposes of this paragraph, all corporations which are component members of the same controlled group of corporations at any time after December 31, 1981, and before January 1, 1984, shall be treated as 1 corporation.

"(ii) CORPORATIONS MEMBERS OF MORE THAN 1 GROUP.—For purposes of this subparagraph, if (but for this clause) a corporation would be a component member of more than 1 controlled group of corporations during the period described in clause (i)—

"(I) if such corporation is a component member of a controlled group on October 1, 1982, such corporation shall be treated only as a component member of such group, or

"(II) if subclause (I) does not apply, such corporation shall be treated as a component member of only the first such controlled group.

"(iii) CONTROLLED GROUP OF CORPORATIONS DEFINED.—For purposes of this subparagraph, the term 'controlled group of corporations' has the meaning given such term by section 1563(a) of the Internal Revenue Code of 1954, except that—

"(I) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1) of such Code, and

"(II) the determination shall be made without regard to subsections (a)(4), (b), and (e)(3)(C) of section 1563 of such Code.

"(D) TREATMENT OF DEEMED LIQUIDATIONS UNDER SECTION 338.—If an election under section 338 of the Internal Revenue Code of 1954 is made during 1982 with respect to any qualified stock purchase (within the meaning of such section 338), the requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met with respect to the target corporation for purposes of applying section 338 of such Code. For purposes of this paragraph, an election to which subparagraph (A) applies by reason of this subparagraph shall be treated as a sale and a liquidation."

SEC. 102. ADJUSTMENTS TO NET OPERATING LOSS CARRYBACK AND CARRYFORWARD RULES FOR FEDERAL NATIONAL MORTGAGE ASSOCIATION.

(a) 10-YEAR CARRYBACK AND 5-YEAR CARRYFORWARD FOR LOSSES OTHER THAN MORTGAGE DISPOSITION LOSSES.—Paragraph (1) of section 172(b) (relating to net operating loss carrybacks and carryovers) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H) In the case of a net operating loss of the Federal National Mortgage Association for any taxable year beginning after December 31, 1981—

"(i) such loss, to the extent it exceeds the FNMA mortgage disposition loss (within the meaning of subsection (i)), shall be—

"(I) a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss, and

"(II) a net operating loss carryover to each of the 5 taxable years following the taxable year of the loss, and

"(ii) the FNMA mortgage disposition loss shall be—

"(I) a net operating loss carryback to each of the 3 taxable years preceding the taxable year of the loss, and

"(II) a net operating loss carryover to each of the 15 taxable years following the taxable year of the loss."

(b) RULES RELATING TO FNMA MORTGAGE DISPOSITION LOSS.—Section 172 is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

"(i) RULES RELATING TO FNMA MORTGAGE DISPOSITION LOSS.—

"(1) FNMA MORTGAGE DISPOSITION LOSS DEFINED.—

"(A) IN GENERAL.—For purposes of subsection (b)(1)(H) and this subsection, the term 'FNMA mortgage disposition loss' means for any taxable year the excess (if any) of—

"(i) the losses for such year from the sale or exchange of mortgages, securities, and other evidences of indebtedness, over

"(ii) the gains for such year from the sale or exchange of such assets.

"(B) FNMA MORTGAGE DISPOSITION LOSS CANNOT EXCEED THE NET OPERATING LOSS FOR THE YEAR.—The amount of

the FNMA mortgage disposition loss for any taxable year shall not be greater than the net operating loss for such year.

"(C) FORECLOSURE TRANSACTIONS NOT INCLUDED.—In applying subparagraph (A), any gain or loss which is attributable to a mortgage foreclosure shall not be taken into account.

"(2) COORDINATION WITH SUBSECTION (b)(2).—In applying paragraph (2) of subsection (b), a FNMA mortgage disposition loss shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated."

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (i) of section 172(b)(1) is amended by striking out "(H), and (I)" and inserting in lieu thereof "(H), (I), and (J)".

(2) Subparagraph (B) of section 172(b)(1) is amended by striking out "and (I)" in the second sentence and inserting in lieu thereof "(H), and (J)".

(3) Subparagraph (i) of section 172(b)(1), as redesignated by subsection (a), is amended by striking out "subsection (i)" and inserting in lieu thereof "subsection (j)".

(4) Paragraph (3) of section 172(j), as redesignated by subsection (b), is amended by striking out "subsection (b)(1)(H)" each place it appears and inserting in lieu thereof "subsection (b)(1)(I)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to net operating losses for taxable years beginning after December 31, 1981.

SEC. 103. ROLLOVER OF GAIN ON CERTAIN SALES UNDER FCC ORDER WHERE NEWSPAPERS ARE BOUGHT.

If—

(1) a corporation was ordered by the Federal Communications Commission in January 1975 to divest itself of its newspaper operations or its broadcasting operations,

(2) after the conclusion of the appellate process, the order was again issued in October 1979,

(3) the corporation sold its broadcasting operations before 1982, and

(4) on October 15, 1981, the corporation acquired 100 percent of the stock of a publishing company,

then the second sentence of section 1071(a) of the Internal Revenue Code of 1954 shall be applied with respect to sales and exchanges by such corporation before January 1, 1982, which are related to such order as if such second sentence treated stock of any corporation the principal business of which is operating newspapers and related printing operations in the same manner as stock of a corporation operating a radio broadcasting station.

SEC. 104. TREATMENT OF CERTAIN SHALE OIL PROPERTY AS ENERGY PROPERTY.

(a) IN GENERAL.—Paragraph (7) of section 48(l) is amended by striking out "but does not" and all that follows and inserting in lieu thereof "; except that such term does not include equipment for hydrogenation, refining, or other process subsequent to retorting

other than hydrogenation or other process which is applied in the vicinity of the property from which the shale was extracted and which is applied to bring the shale oil to a grade and quality suitable for transportation to and processing in a refinery."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to periods beginning after December 31, 1980, and before January 1, 1983, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1954.

SEC. 105. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES.

(a) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 (relating to computation of annuities) is amended—

(1) by striking out "5 consecutive years" and inserting in lieu thereof "3 consecutive years", and

(2) by striking out "37½" and inserting in lieu thereof "40".

(b) COST-OF-LIVING ADJUSTMENTS.—Section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended by redesignating subsection (s) as subsection (t), and by inserting after subsection (r) the following new subsection:

"(s) INCREASES ATTRIBUTABLE TO INCREASED PAY.—Whenever the salary of a judge under section 7443(c) is increased, each annuity payable from the survivors annuity fund which is based, in whole or in part, upon a deceased judge having rendered some portion of his or her final 18 months of service as a judge of the Tax Court, shall also be increased. The amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each full 5 percent by which such salary has been increased."

(c) CATCHUP FOR SURVIVORS ANNUITIES IN PAY STATUS ON DATE OF ENACTMENT.—If an annuity payable under section 7448(h) of the Internal Revenue Code of 1954 (relating to entitlement to annuity) to the surviving spouse of a judge of the United States Tax Court is being paid on the date of the enactment of this Act, then the amount of that annuity shall be adjusted, as of the first day of the first month beginning more than 30 days after such date, to reflect the amount of the annuity which would have been payable if the amendment made by subsection (a) applied with respect to increases in the salary of a judge under section 7443(c) of such Code taking effect after December 31, 1963.

(d) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to annuities payable with respect to judges dying after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) of this section shall apply with respect to increases in the salary of judges of the United States Tax Court taking effect after the date of the enactment of this Act.

SEC. 106. TAX COURT PROCEDURES.

(a) DISPUTES INVOLVING CERTAIN EXCISE TAXES.—

(1) IN GENERAL.—Subsection (a) of section 7463 (relating to disputes involving $5,000 or less) is amended—

(A) by striking out "or" at the end of paragraph (2),

(B) by adding "or" at the end of paragraph (3), and

(C) by inserting after paragraph (3) the following new paragraph:

"(4) $5,000 for any 1 taxable period (or, if there is no taxable period, taxable event) in the case of any tax imposed by subtitle D which is described in section 6212(a) (relating to a notice of deficiency),".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to petitions filed after the date of the enactment of this Act.

(b) ORAL FINDINGS OF FACT OR OPINIONS.—Subsection (b) of section 7459 (relating to inclusion of findings of fact or opinions in report) is amended by adding at the end thereof the following new sentence: "Subject to such conditions as the Tax Court may by rule provide, the requirements of this subsection and of section 7460 are met if findings of fact or opinion are stated orally and recorded in the transcript of the proceedings."

(c) HEARINGS AND OPINIONS BY COMMISSIONERS IN CASES INVOLVING DEFICIENCIES OF $5,000 OR LESS.—

(1) Section 7456 (relating to administration of oaths and procurement of testimony) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) PROCEEDINGS WHICH MAY BE ASSIGNED TO COMMISSIONERS.—The chief judge may assign—

"(1) any declaratory judgment proceeding,

"(2) any proceeding under section 7463, and

"(3) any other proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds $5,000,

to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to any such proceeding, subject to such conditions and review as the court may by rule provide."

(2) Subsection (c) of section 7456 is amended by striking out the last sentence.

(d) DESIGNATION OF JUDGES WHO ARE RECEIVING RETIRED PAY.—Subsection (b) of section 7447 (relating to retirement) is amended by adding at the end thereof the following sentence: "Any judge who retires shall be designated 'senior judge'."

SEC. 107. WITHOLDING STATEMENTS FOR TERMINATED EMPLOYEES.

(a) IN GENERAL.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking out "on the day on which the last payment of remuneration is made" and inserting in lieu thereof "within 30 days after the date of receipt of a written request from the employee if such 30-day period ends before January 31".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to employees whose employment is terminated after the date of the enactment of this Act.

SEC. 108. WITHHOLDING OF STATE INCOME TAX FROM THE WAGES OF CERTAIN SEAMEN.

Section 12 of the Act of March 4, 1915 (38 Stat. 1169; 46 U.S.C. 601), is amended by inserting before the period at the end of the second proviso the following: ", but nothing in this section shall prohibit any such withholding of the wages of any seaman who is employed in the coastwise trade between ports in the same State if such withholding is pursuant to a voluntary agreement between such seaman and his employer".

SEC. 109. WAGERING PERMITTED UNDER STATE LAW.

(a) TAX ON WAGERS.—Subsection (a) of section 4401 (relating to wagers) is amended to read as follows:

"(a) WAGERS.—

"(1) STATE AUTHORIZED WAGERS.—There shall be imposed on any wager authorized under the law of the State in which accepted an excise tax equal to 0.25 percent of the amount of such wager.

"(2) UNAUTHORIZED WAGERS.—There shall be imposed on any wager not described in paragraph (1) an excise tax equal to 2 percent of the amount of such wager."

(b) OCCUPATIONAL TAX.—Section 4411 (relating to imposition of tax) is amended to read as follows:

"SEC. 4411. IMPOSITION OF TAX.

"(a) IN GENERAL.—There shall be imposed a special tax of $500 per year to be paid by each person who is liable for the tax imposed under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

"(b) AUTHORIZED PERSONS.—Subsection (a) shall be applied by substituting '$50' for '$500' in the case of—

"(1) any person whose liability for tax under section 4401 is determined only under paragraph (1) of section 4401(a), and

"(2) any person who is engaged in receiving wagers only for or on behalf of persons described in paragraph (1)."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on January 1, 1983.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall take effect on July 1, 1983.

TITLE II—OTHER PROVISIONS

SEC. 201. UNEMPLOYMENT BENEFITS PAID TO EX-SERVICE MEMBERS.

(a) ELIGIBILITY REQUIREMENTS.—Paragraph (1) of section 8521(a) of title 5, United States Code, is amended to read as follows:

"(1) 'Federal service' means active service (not including active duty in a reserve status unless for a continuous period of 180 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service—

"(A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

"(B)(i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or

"(ii) the individual was discharged or released before completing such term of active service—

"(I) for the convenience of the Government under an early release program,

"(II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

"(III) because of hardship, or

"(IV) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more;"

(b) PERIOD FOR WHICH BENEFITS PAYABLE.—Section 8521 of such title 5 is amended by adding at the end thereof the following new subsection:

"(c)(1) An individual shall not be entitled to compensation under this subchapter for any week before the fifth week beginning after the week in which the individual was discharged or released.

"(2) The aggregate amount of compensation payable on the basis of Federal service (as defined in subsection (a)) to any individual with respect to any benefit year shall not exceed 13 times the individual's weekly benefit amount for total unemployment."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to terminations of service on or after July 1, 1981, but only for purposes of determining eligibility for benefits for weeks of unemployment beginning after the date of the enactment of this Act.

(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to the extent that such amendments would (but for this paragraph) reduce the amount of compensation payable in the case of benefit years established before the date of the enactment of this Act.

SEC. 202. COMPENSATION PAID TO EX-SERVICE MEMBERS CHARGED TO DEPARTMENT OF DEFENSE.

(a) GENERAL RULE.—

(1) Subsections (b) and (c)(1) of section 8509 of title 5, United States Code, are each amended by striking out "subchapter" each place it appears and inserting in lieu thereof "chapter".

(2) Section 8509 of such title 5 is amended by adding at the end thereof the following new subsection:

"(h) For purposes of this section, the term 'Federal service' includes Federal service as defined in section 8521(a)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall take effect on October 1, 1983.

(2) TREATMENT OF PREVIOUSLY APPROPRIATED FUNDS.—All funds appropriated which are available (on October 1, 1983) for the making of payments to States under chapter 85 of title 5, United States Code, on the basis of Federal service (as defined in section 8521(a) of such title 5) or for the making of payments under such chapter on the basis of such service in States which

do not have in effect an agreement under such chapter, shall be transferred on such date to the Federal Employees Compensation Account established by section 909 of the Social Security Act. On and after such date, all payments described in the preceding sentence shall be made from such account as provided by section 8509 of such title 5.

SEC. 203. EXCLUSION OF CERTAIN SERVICES FROM THE FEDERAL UNEMPLOYMENT TAX ACT.

Subsection (b) of section 822 of the Economic Recovery Tax Act of 1981 is amended by striking out "during 1981" and inserting in lieu thereof "after December 31, 1980, and before January 1, 1983".

SEC. 204. ELIGIBILITY REQUIREMENTS FOR TRADE ADJUSTMENT ASSISTANCE.

Section 2514(a)(2)(A) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 889) (relating to the effective date of amendments relating to group eligibility requirements for adjustment assistance for workers under the Trade Act of 1974) is amended by striking out "the 180th day after the date of the enactment of this Act" and inserting in lieu thereof "October 1, 1983".

And the House agree to the same.

Amend the title so as to read:

An Act to reduce the amount of LIFO recapture in the case of certain plans of liquidation adopted during 1982, to make adjustments in the net operating loss carryback and carryforward rules for the Federal National Mortgage Association, and for other purposes.

And the House agree to the same.

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
C. B. RANGEL,
PETE STARK,
HAROLD FORD,
BARBER B. CONABLE,
JOHN J. DUNCAN,
BILL FRENZEL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
MALCOLM WALLOP,
RUSSELL B. LONG,
HARRY F. BYRD, JR.,
Managers on the Part of the Senate.

99-244 O - 82 - 2

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

CONTENTS

FOR STATEMENT OF MANAGERS

	Page
I. Explanation of Provisions	13
A. TAX PROVISIONS:	
1. One-year postponement of effective date for LIFO reserve recapture rule	13
2. Modification of net operating loss rule for the Federal National Mortgage Association	15
3. Award of reasonable litigation costs where taxpayer prevails and government position was unreasonable	16
4. Modification of rules as to acceleration of accrual of taxes	18
5. Treatment of certain lending or finance businesses for purposes of the tax on personal holding companies	19
6. Additional refunds relating to repeal of the excise tax on buses	20
7. Allowance of regulated investment company status to certain small business development companies	21
8. Rollover of gain on FCC-ordered disposition of broadcast property	22
9. Exclusion of certain research expenses from capital expenditure limitation for small issue industrial development bonds	24
10. Expansion of oil shale tax credits for 1981 and 1982	25
11. Modification of residential energy tax credit subsidized financing rules	26
12. Deferred compensation plans for State judges	27
13. Declaratory judgment for current use valuation	28
14. Declaratory judgment for installment payment of estate taxes	30

I. Explanation of Provisions—Continued
A. Tax Provisions—Continued
15. Change to section 6166 "second death" provision — Page 32
16. Annuities for survivors of Tax Court judges — 33
17. Modification of certain Tax Court procedural rules — 34
18. Time for furnishing Form W-2 to terminated employee — 35
19. Withholding of State income tax from seamen's wages on a voluntary basis — 36
20. Financing of the Reforestation Trust Fund — 37
21. Due date for energy task force study on oil supply distribution — 38
22. Delay of Bankruptcy Tax Act effective date relating to discharge of indebtedness — 39
23. Amendments to the Mortgage Subsidy Bond Tax Act — 40
24. Reduction in excise tax on wagers and occupational tax on wagering in States authorizing wagering — 42
25. Limitation on use of small issue industrial development bonds — 43
B. Other Provisions:
1. Use of certain amounts transferred to State unemployment funds (Reed Act) — 45
2. Removal of age limitation for exclusion from FUTA of wages paid to student interns — 46
3. Extension of exclusion from FUTA of wages paid to certain alien farm workers — 47
4. Unemployment benefits paid to ex-Servicemembers — 48
5. Change in SSI accounting period — 49
6. Treatment of unnegotiated checks under the SSI program — 50
7. Collection of administrative costs for non-AFDC child support enforcement — 51
8. Technical amendments to child support enforcement provisions in P.L. 97-35 — 52
9. Technical amendments to social services and foster care provisions in P.L. 97-35 — 53
10. One-year extension of existing one-year FUTA exemption for certain fishermen — 54
11. Eligibility requirements for trade adjustment assistance — 55
12. Medicare enrollment period for individuals formerly eligible for benefits under the Public Health Service Act — 56
II. Estimated Budget Effects — 57

I. EXPLANATION OF PROVISIONS

A. Tax Provisions

1. One-year postponement of effective date for LIFO reserve recapture rule (sec. 102 of the House bill, sec. 101 of the Senate amendment, and secs. 336(b) and 337(f) of the Code)

Present law

Under provisions enacted in P.L. 96–223 (Crude Oil Windfall Profit Tax Act of 1980), a corporation which distributes its LIFO inventory to its shareholders as part of a partial or complete liquidation generally must "recapture" (recognize as ordinary income) an amount equal to its LIFO reserve (Code sec. 336). (The LIFO reserve is the difference between the cost of inventory valued by the LIFO method and the cost of inventory valued by the FIFO method.) Also, a corporation which sells its LIFO inventory in the course of a 12-month liquidation must recapture an amount equal to its LIFO reserve (sec. 337(f)). These rules apply to distributions and dispositions made pursuant to plans of liquidation adopted after December 31, 1981.

House bill

The House bill postpones for one year the effective date of the LIFO reserve recapture rule as enacted in P.L. 96–223. Thus, the new LIFO reserve recapture rule will apply only to distributions and dispositions made pursuant to plans of liquidation adopted after December 31, 1982.

Senate amendment

Same as House bill.

Conference agreement

The conference agreement follows the House bill and Senate amendment with the following modifications. The LIFO reserve recapture rule will apply, with respect to a corporation, to distributions and dispositions made pursuant to plans of liquidation adopted after December 31, 1981, and before January 1, 1983, only to the extent that the LIFO reserve to be recaptured by that corporation is greater than $1 million (i.e., the amount of the recapture otherwise required would be reduced by up to $1 million). However, in order to qualify for this exemption, the liquidation pursuant to the plan must be completed before January 1, 1984. For this purpose, the rules applicable under sections 333 and 337 shall apply in determining when a liquidation is completed. If a corporation has more than one qualifying sale or liquidation, then the $1 million shall apply to the sales or liquidations in the order in which the distributions, sales or exchange occur until the $1 million is used up.

For purposes of the $1 million exemption of LIFO recapture, all corporations which are members of a controlled group any time in 1982 will be treated as one corporation. For this purpose, a controlled group of corporations is determined under section 1563 except that "more than 50 percent" is substituted for "at least 80 percent." Where, under this rule, a corporation is a member of more than one controlled group in 1982, the corporation will be treated as a member of the controlled group of which it was a member on October 1, 1982, or, if it was not a member of a controlled group on October 1, 1982, then it will be treated as a member of the first controlled group of which it was a member in 1982.

Where an election is made under section 338 in 1982, the conference agreement provides a rule which automatically qualifies the election for the $1 million LIFO exemption. Under this rule, the section 338 election is treated as the adoption of a plan of liquidation in 1982, followed by a sale of its assets during 1982 in a transaction to which section 337 applies, and then followed by a complete liquidation in 1982.

2. Modification of net operating loss rule for the Federal National Mortgage Association (sec. 103 of the House bill, sec. 102 of the Senate amendment, and sec. 172 of the Code)

Present law

Under provisions enacted in the Economic Recovery Tax Act of 1981, taxpayers may carry back a business net operating loss (NOL) against income for the 3 taxable years preceding the loss year and carry forward any remaining unused losses to the 15 years following the loss year (Code sec. 172(b)).

In an exception to this general carryover rule, present law provides a 10-year carryback and a 5-year carryforward for NOL's of banks and certain other financial institutions. Since the Federal National Mortgage Association (FNMA) is not such a financial institution, it is not eligible for the 10-year carryback treatment, and thus must use a 3-year carryback and a 15-year carryforward.

House bill

The House bill provides a 10-year carryback and 5-year carryforward of the NOL of the FNMA to the extent the amount of the NOL exceeds the FNMA mortgage disposition loss.

The FNMA mortgage disposition loss is the net loss from the sale or exchange of mortgages, securities (not including stock), and other evidences of indebtedness to the extent that such net loss is not greater than the NOL for the taxable year. Gains and losses attributable to mortgage foreclosures will not be taken into account in determining the amount of an FNMA disposition loss. The FNMA mortgage disposition loss will continue to have a 3-year carryback and a 15-year carryforward, as under present law.

The provision is effective for NOL's incurred in taxable years of the FNMA beginning after 1981. Thus, for example, an NOL for its taxable year beginning in 1982 in excess of the FNMA mortgage disposition loss could be carried back as far as its taxable year beginning in 1972.

Senate amendment

Same as House bill.

Conference agreement

The conference agreement is the same as the House bill and the Senate amendment.

3. Award of reasonable litigation costs where taxpayer prevails and government position was unreasonable (sec. 104 of the House bill, sec. 301 of the Senate amendment, and sec. 6673 and new sec. 7430 of the Code)

Present law

Award of litigation costs

Under the Equal Access to Justice Act (P.L. 96–481), a taxpayer who prevails in civil tax litigation in the Federal courts (other than the U.S. Tax Court) may be awarded reasonable attorney fees and other litigation costs, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

Damages for delay in Tax Court

Under present law, if a Tax Court proceeding has been instituted by the taxpayer merely for delay, the Court may award damages to the United States in an amount not to exceed $500 (Code sec. 6673).

House bill

1. General rule.—A taxpayer who prevails in civil tax litigation in the Federal courts, including the U.S. Tax Court, may be awarded reasonable attorney fees and other litigation costs.

2. Dollar limitation on award.—$50,000 (no special rule for multiple actions which involve the same taxpayer or which could be joined).

3. Prerequisite for recovery.—The taxpayer may recover litigation costs only if the position of the United States in the case was unreasonable.

4. Special rule for charities.—In litigation where the deductibility of contributions by a taxpayer to a charitable organization is the most significant issue, the organization (as well as the taxpayer) may recover costs incurred by it in the litigation if the taxpayer prevails, even though the charity is not a party to the action.

5. Effective date.—The House litigation costs provision applies to U.S. Tax Court cases begun after 1982, and to other Federal tax cases pending on, or begun after, October 1, 1981.

6. Termination date.—The House litigation costs provision will not apply to cases begun after September 30, 1984.

7. Damages for delay in Tax Court.—If U.S. Tax Court proceedings have been brought by a taxpayer primarily for delay, or if the taxpayer's position in a case is frivolous or groundless, the Court may award damages to the United States of up to $5,000, effective for Tax Court cases begun after 1981.

Senate amendment

1. General rule.—Same as House bill.

2. Dollar limitation on award.—$25,000 (special rule for multiple actions which involve the same taxpayer or which could be joined).

3. Prerequisite for recovery.—Same as House bill, except that the Senate amendment provides explicitly that the taxpayer has the burden of establishing that the government's position was unreasonable.

4. Special rule for charities.—None (but under the Senate amendment, a taxpayer could recover costs incurred by a third party on behalf of the taxpayer).

5. Effective date.—The Senate litigation cost provision applies to civil tax litigation, including U.S. Tax Court cases, begun after May 31, 1982.

6. Termination date.—The Senate litigation costs provision will not apply to cases begun after May 31, 1987.

7. Damages for delay in Tax Court.—Same as House bill, except that the maximum damages awardable to the United States are $2,500 and that the provision is effective for Tax Court cases begun after May 31, 1982.

Conference agreement

The provision was deleted from this bill because a similar provision was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

99-244 O - 82 - 3

4. Modification of rules as to acceleration of accrual of taxes (sec. 105 of the House bill and sec. 461(d) of the Code)

Present law

Under the accrual method of accounting, an expense generally is deductible for the taxable year in which all the events which determine the fact of the liability have occurred and the amount of the deduction can be determined with reasonable accuracy.

However, present law also provides that, if a taxing jurisdiction changes the date for imposing a deductible tax so that the tax would be deductible in an earlier period under the general rule, an accrual-basis taxpayer may not deduct the tax in the earlier period. Instead, the taxpayer may deduct the tax in the period that the tax otherwise would have been deductible as if the taxing jurisdiction had not accelerated the date for imposing the tax (Code sec. 461(d)).

House bill

Under the House bill, an accrual-basis taxpayer may accrue a deduction for taxes on the liability date of the tax, even if that date has been accelerated by the taxing jurisdiction. The taxpayer is not allowed to take two deductions for taxes for a taxable year in which the liability date is changed, and must account for the disallowed deduction by establishing a suspense account.

The provision applies to changes in tax liability dates that occur after the date of enactment. However, in the case of a State franchise tax based on income the assessment date of which has been changed, a taxpayer which first accrued such tax after the date of the change and which has consistently accrued the deduction for the tax on the new liability date could continue to accrue the deduction on the date used, without complying with the suspense account requirements under the provision.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

5. Treatment of certain lending or finance businesses for purposes of the tax on personal holding companies (sec. 106 of the House bill, sec. 103 of the Senate amendment, and sec. 542 of the Code)

Present law

Certain types of corporations, actively engaged in a trade or business which produces income that usually would be considered passive investment income, are excluded from the personal holding company tax provisions (Code sec. 541). Present law excludes from this tax a corporation actively engaged in a lending or finance business if the corporation has qualifying business expenses equal to 15 percent of the first $500,000 of ordinary gross income from its lending or finance business, plus 5 percent of such ordinary gross income from $500,000 to $1 million. The term "lending or finance business" is defined to include the business of making loans with maturities of not more than 60 months.

House bill

Effective for taxable years beginning after 1980, the House bill increases the 60-month loan maturity limitation of present law to 144 months and amends the definition of a lending or finance business qualifying for the tax exclusion to include the business of making loans in indefinite maturity credit transactions.

Effective for taxable years beginning after 1981, the House bill also modifies the business expense test of present law, to require a lending or finance company qualifying for the tax exclusion to have qualifying business expenses equal to 15 percent of the first $500,000 of ordinary gross income from the lending or finance business, plus 5 percent of such ordinary gross income in excess of $500,000. Thus, 5 percent of ordinary gross income in excess of $1 million will be added to the qualifying business expense test of present law.

Senate amendment

Same as House bill.

Conference agreement

The provision was deleted from this bill because it was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

6. Additional refunds relating to repeal of the excise tax on buses (sec. 107 of the House bill, sec. 401 of the Senate amendment, and sec. 231(c)(2) of the Energy Tax Act of 1978)

Present law

P.L. 95–618 (the Energy Tax Act of 1978) repealed the prior 10-percent manufacturers excise tax on the sale of buses, effective for buses sold after November 9, 1978. The Act also allowed a credit for or refund of the excise tax paid on buses sold after April 19, 1977 and before November 10, 1978, if the manufacturer (1) possessed evidence of sale and reimbursement of tax to the ultimate purchaser; (2) filed a claim for credit or refund with the Treasury Department before September 5, 1979; and (3) reimbursed the ultimate purchaser for the tax paid before September 5, 1979.

House bill

The House bill modifies the requirements for obtaining credits for or refunds of excise taxes paid on buses sold after April 19, 1977 and before November 10, 1978.

Under the bill, the date before which the ultimate purchaser must have been reimbursed is extended from September 5, 1979, to January 1, 1983. Also, the bill relaxes the present law requirement that the manufacturer must possess evidence of reimbursement of the tax to the ultimate purchaser. Under the bill, the manufacturer may make reimbursement at the same time it receives the refund, provided that the plan is satisfactory to the Treasury.

The provision is effective on the date of enactment.

Senate amendment

Same as House bill.

Conference agreement

The provision was deleted from this bill because it was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97–248).

7. Allowance of regulated investment company status to certain small business development companies (sec. 104 of the Senate amendment and sec. 851(a) of the Code)

Present law

Under present law, a regulated investment company (commonly called a "mutual fund" or "money market fund") is treated, in essence, as a conduit for tax purposes. This treatment is achieved by allowing a regulated investment company a deduction for dividends paid to its shareholders. To qualify as a regulated investment company under the Code, a company that is an investment company under the Investment Company Act of 1940 must be registered under that Act with the Securities and Exchange Commission (Code sec. 851(a)).

Under the Small Business Incentive Act of 1980 (P.L. 96–477), certain investment companies providing capital and management assistance to small businesses (called "business development companies") may elect an alternative form of regulation in lieu of registration under the Investment Company Act. A business development company which elects this alternative form of regulation is precluded from qualifying as a regulated investment company under the Code, because the company did not register with the SEC under the Investment Company Act.

House bill

No provision.

Senate amendment

A business development company will qualify as a regulated investment company for tax purposes if it could qualify for registration under the Investment Company Act of 1940, but elects to be regulated under the Small Business Incentive Act of 1980. The provision applies to taxable years ending after the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

8. Rollover of gain on FCC-ordered disposition of broadcast property (sec. 105 of the Senate amendment and sec. 1071 of the Code)

Present law

Under present law, gain realized on the sale or exchange of property (including stock in a corporation) is not recognized if the sale or exchange is certified by the Federal Communications Commission (FCC) as necessary or appropriate to effectuate a change in policy or adoption of a new policy with respect to the ownership and control of a radio or television station or newspaper and the taxpayer elects to treat the sale or exchange as an involuntary conversion or to reduce basis in depreciable assets.

If the taxpayer elects involuntary conversion treatment, gain is not recognized to the extent the taxpayer purchases replacement property that is similar or related in service or use to the property sold or exchanged (sec. 1033). For purposes of this provision, however, stock in a corporation operating a radio broadcasting station, whether or not such stock represents control, is treated as property similar or related in service or use to the property sold or exchanged even if it would not be so classified under section 1033.

The Internal Revenue Service has ruled (in a private letter ruling) that nonrecognition treatment is not available under this provision when a corporation, in an FCC-certified sale or exchange, divests itself of a television station and reinvests in stock of a corporation operating a newspaper. The Service concluded that reinvestment in a newspaper company did not constitute an investment either in property similar or related in service or use to the television station sold or exchanged, or investment in the stock of a radio broadcasting station.

House bill

No provision.

Senate amendment

The Senate amendment amends section 1071 to provide nonrecognition of gain in FCC-certified divestitures where the taxpayer reinvest in stock of a corporation operating a newspaper after June 24, 1981.

Conference agreement

The conference agreement provides for a non-Code provision of law which fixes the right to nonrecognition treatment on the reinvestment in the stock of a newspaper corporation after the FCC-certified sale of broadcast properties. Four criteria must be met, however. First, the corporation must have been ordered by the Federal Communications Commission in January 1975 to divest itself of its newspaper operations or its broadcasting operations. Second, the corporation must have gone

to court, and after the conclusion of the appellate process, the FCC order must have been reissued in October 1979. Three, the corporation must have sold its broadcasting operations before 1982. Four, on October 15, 1981, the corporation must have acquired 100 percent of the stock of a publishing company. If all four criteria are met, then the second sentence of section 1071(a) of the Internal Revenue Code of 1954 will be applied as if such second sentence treated stock of any corporation, whether or not representing control of such corporation, the principal business of which is operating newspaper and related printing operations (such as an advertising circular business) in the same manner as stock of a corporation operating a radio broadcasting station, where the FCC-certified sale or exchange occurs before January 1, 1982. Thus, for example, if a radio or television broadcasting corporation makes one or more FCC-certified sales or exchanges of radio broadcasting property (including stock in a corporation) in 1981 and made at least one qualified reinvestment on October 15, 1981, then all such 1981 sales or exchanges will be treated as involuntary conversions (subject to the 2-year reinvestment rule) under section 1033 at the taxpayer's election.

9. Exclusion of certain research expenses from capital expenditure limitation for small issue industrial development bonds (sec. 106 of the Senate amendment and sec. 103(b)(6) of the Code)

Present law

Interest on certain "small issue" industrial development bonds is exempt from Federal income tax if the aggregate amount of outstanding exempt small issues and capital expenditures (financed otherwise than out of the proceeds of an exempt small issue) made over a six-year period does not exceed $10 million (Code sec. 103(b)(6)).

Under present law, research or experimental expenditures incurred in connection with a taxpayer's trade or business are taken into account for purposes of determining if the small issue limitation of $10 million is exceeded, whether or not the taxpayer elects (under Code sec. 174(a)) to deduct currently such research expenses.

House bill

No provision.

Senate amendment

Under the Senate amendment, expenditures for research wages or for research supplies (as defined in secs. 44F(b)(2)(A)(i) or (ii)) which the taxpayer elects to deduct currently (under sec. 174(a)) are not taken into account for purposes of the $10 million capital expenditure limitation on tax-exempt small issue industrial development bonds. The provision applies to research wage and supply expenditures made after the date of enactment.

Conference agreement

The provision was deleted from this bill because it was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

10. Expansion of oil shale tax credits for 1981 and 1982 (sec. 107 of the Senate amendment and sec. 48(l) of the Code)

Present law

The Energy Tax Act of 1978 provided a 10-percent energy investment tax credit for "shale oil equipment", defined for this purpose to mean equipment for producing or extracting oil from oil-bearing shale rock (Code sec. 48(l)(7)). Under present law, the statute expressly excludes equipment for hydrogenation, refining, or other processes subsequent to retorting from the definition of qualifying shale oil equipment.

House bill

No provision.

Senate amendment

The Senate amendment expands the definition of shale oil equipment for purposes of the energy investment tax credit to include equipment used in hydrogenation or other similar processes subsequent to retorting that are necessary to bring about the chemical change in the hydrocarbons necessary to make the shale oil less viscous and to remove contaminants such as sulphur and arsenic so that it may be transported to the refinery. The amendment does not expand the definition of shale oil equipment to include equipment, including hydrogenation equipment, used to refine shale oil.

The provision applies to periods beginning after December 31, 1980, and before January 1, 1983.

Under present law, the energy investment credit for shale oil equipment generally is available after 1982 and before 1991 if specified affirmative commitments are undertaken with respect to qualified property that involves long-term projects of two years or more. This special affirmative commitment rule under present law does not apply to hydrogenation equipment made eligible as oil shale property under the amendment. Thus, the credit for hydrogenation equipment under the Senate amendment will not apply to any construction or acquisition after December 31, 1982.

Conference agreement

The conference agreement follows the Senate amendment with technical modifications. As modified, the provision refers to equipment rather than property. This change is necessary to maintain consistency with present law. In addition, the agreement clarifies that only equipment for processes located within the vicinity of the property from which the shale was extracted (i.e., within 50 miles) qualifies for the credit, provided that such processes are applied to bring the shale oil to a grade and quality suitable for transportation to and processing in a refinery.

99-244 O - 82 - 4

11. Modification of residential energy tax credit subsidized financing rules (sec. 108 of the Senate amendment and sec. 44C(c)(10) of the Code)

Present law

Under present law (Code sec. 44C(c)(10)), expenditures financed by Federal, State, or local grants which are exempt from Federal income tax are not eligible for the residential energy tax credit for conservation and renewable energy source expenditures. Further, any portion of qualified expenditures financed by subsidized energy financing is not eligible for the credit. Also, the expenditure limits for energy conservation expenditures ($2,000) and for renewable energy source expenditures ($10,000) are reduced by any portion of expenditures which is financed by subsidized energy financing or by nontaxable government grants.

Subsidized energy financing means financing provided under a government program if a principal purpose of the program is to provide subsidized financing for projects designed to conserve or produce energy. The term includes the direct or indirect use of bonds which are exempt from Federal income tax and which provide funds under such a program. Subsidized energy financing, however, does not include loan guarantees.

House bill

No provision.

Senate amendment

The Senate amendment provides an exception to the definition of subsidized energy financing applicable to the residential energy credit. Specifically, subsidized energy financing will not include loans under a program which provides a State tax credit to a financial institution in order to provide residential energy loans to individuals at a below-market rate of interest. Thus, an individual who receives financing made after December 31, 1980 under such a loan program will be eligible for any applicable Federal residential energy tax credit.

Conference agreement

The conference agreement does not include the Senate amendment.

12. Deferred compensation plans for State judges (sec. 109 of the Senate bill and sec. 457(e) of the Code)

Present law

Compensation deferred by an employee under an unfunded eligible State deferred compensation plan generally is excluded from the employee's income until paid or made available to the employee under the plan. However, if an unfunded deferred compensation plan fails to meet the requirements of an eligible plan, then all compensation deferred under the plan is includible in income currently unless the amounts deferred are subject to a substantial risk of forfeiture, or is includible in the first taxable year in which there is no substantial risk of forfeiture.

House bill

No provision.

Senate amendment

Participants in an unfunded qualified State judicial plan will not be subject to the rule requiring participants in an ineligible plan to include plan benefits in gross income merely because there is no substantial risk that the benefits will be forfeited.

A State's unfunded retirement plan for the exclusive benefit of its elected or appointed judges or their beneficiaries will be a qualified State judicial plan if (1) the plan has been in existence since December 31, 1978; (2) all judges eligible to benefit are required to participate and to contribute the same fixed percentage of compensation; and (3) a judge's retirement benefit under the plan is a percentage of the compensation of judges of the State holding similar positions.

In addition, the plan may not pay benefits with respect to a participant which exceed the limitations on benefits permitted under tax-qualified plans, and may not provide an option to plan participants as to contributions or benefits the exercise of which would affect the amount of the participant's currently includible compensation. Further, the plan will not be qualified if judges participating in the plan are also eligible to participate, on the basis of their judicial service, in any eligible State or local government deferred compensation plan.

The provision applies to taxable years beginning after 1978.

Conference agreement

The provision was deleted from this bill because a similar provision was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

13. Declaratory judgment for current use valuation (sec. 201 of the Senate amendment and new sec. 7479 of the Code)

Present law

If certain requirements are met, family farms and real property used in other closely held businesses may be valued for estate tax purposes at the property's current use value, rather than at its full fair market value, provided that the gross estate may not be reduced by more than a specified amount (Code sec. 2032A). If, within 10 years of the decedent's death, the property is disposed of to non-family members or ceases to be used for such purposes, estate tax benefits obtained by virtue of the reduced valuation are recaptured by means of a special "additional estate tax" imposed on the qualified heir. A special lien is imposed on the real property for the amount of the additional estate tax (sec. 6324B).

To compute the amount of the reduction in estate tax value from current use valuation and, thus, the maximum amount of the potential "additional estate tax," both the current use value and the fair market value of the qualified property must be established as of the date of death. Since the issue of the fair market value of specially valued property may not affect any presently assessable amount of tax if it is the only unresolved issue in an estate, there is no opportunity for judicial review of the issue under present law unless the entire use valuation election is disallowed.

House bill

No provision.

Senate amendment

In general, the Senate amendment provides for Tax Court review of Treasury Department determinations of the fair market value of specially valued property. The amendment permits an executor to request the Treasury Department to examine the fair market value of the specially valued property and, thereby, finally determine that value for all purposes. The amendment further provides that the Treasury can initiate such examinations without the executor's request.

If the Treasury Department determines the fair market value of the specially valued property is different from that value as reported by the executor (either pursuant to an examination requested by the executor or an examination initiated by the Treasury), a notice of the Treasury's determination is to be sent to the executor by registered or certified mail. If the executor and the Treasury agree on the fair market value after the notice is sent, that value is binding on all parties in future actions. If the executor does not agree with the Treasury Department's determination, the executor has 90 days from the date on which notice of the Treasury's determination is sent to petition the Tax Court to review the fair market value of the property. A decision of the Tax Court is binding on all parties in future actions in which the fair mar-

ket value of the specially valued property on the date of the decedent's death is at issue. The decision of the Tax Court is reviewable in the same manner as other decisions of that court. In cases where the examination is requested by the executor and the executor fails to petition the Tax Court within the 90-day period, the value as determined by the Treasury Department is binding on all parties in any further action where that value is an issue.

Because the fair market value of the specially valued property determines the maximum amount of the recapture tax for which a qualified heir is personally liable, the heir is granted a right to intervene in any action before the Tax Court brought by an executor.

In cases where the executor does not request the Treasury Department to examine the fair market value of specially valued property, if (1) the Treasury does not determine that the fair market value of the property is different from that value as reported by the executor on the decedent's estate tax return, within the period of limitations for assessment of estate tax, or (2) the executor fails to agree to the value as determined by the Treasury Department or to petition the Tax Court within the time provided, the value as reported by the executor is not binding on the executor, the qualified heirs, or the Treasury Department in any future actions involving any matters arising under the use valuation provision, the special lien under section 6324B, or with respect to the qualified heir's income tax basis in the specially valued property.

If, however, the executor requests a Treasury Department examination of the fair market value of specially valued property and the Treasury fails to make that examination, that value as shown on the decedent's estate tax return is binding on all parties in any future actions in which it is an issue.

The amendment is effective for estates of decedents dying after December 31, 1981.

Conference agreement

The conference agreement does not include the Senate amendment.

14. Declaratory judgment for installment payment of estate taxes (sec. 202 of the Senate amendment and new sec. 7480 of the Code)

Present law

If the value of an interest in a closely held business exceeds 35 percent of the adjusted gross estate, estate taxes attributable to the interest may be deferred for up to 14 years (annual interest payments for four years, followed by up to 10 annual installments of principal and interest) (Code sec. 6166). If certain events occur during the extended payment period, payment of the entire unpaid tax (plus accrued interest) is accelerated. A special four-percent rate interest rate applies to deferred tax on the first $1 million of value of an interest in a closely held business (sec. 6601(j)).

An administrative determination that interests in an estate do not meet the conditions for installment payment of estate tax, or that payment of remaining installments must be accelerated under certain rules, is not subject to judicial review under present law because no tax deficiency is involved in such determination.

House bill

No provision.

Senate amendment

The Senate amendment establishes a procedure for obtaining a declaratory judgment in the U.S. Tax Court with respect to (1) the extent to which an estate is eligible for extended payment of estate taxes attributable to an interest in a closely held business, and (2) whether there is an acceleration of the extended payments. Under this provision, for example, the Tax Court can determine whether a proprietorship, partnership, or corporation, all or part of the value of which is included in the decedent's estate, is carrying on a trade or business within the meaning of the installment payment provision.

Because this declaratory judgment procedure only applies where there is an actual controversy, no declaratory judgment will be available prior to decedent's death (with respect to eligibility for the installment payment provision) or prior to a transaction involving dispositions or withdrawals of an interest in a closely held business (with respect to whether there is an acceleration). Jurisdiction to issue a declaratory judgment is limited to the United States Tax Court, and the determination of that court is final and conclusive and is not reviewable by any other court.

This remedy is available only if the petitioner (i.e., the executor of the decedent's estate) has exhausted all available administrative remedies within the Treasury Department. Thus, the executor must demonstrate that the Internal Revenue Service has acted adversely to the decedent's estate, that he has appealed any adverse determination by a district office to the appeals division of the Internal Revenue Serv-

ice, and has obtained through the District Director technical advice of the National Office. To exhaust his administrative remedies, a party must satisfy all procedural requirements of the Service.

In addition, no petition to the Tax Court may be filed after 90 days from the date on which the Secretary or his delegate sends notice to the executor of his determination as to the estate's eligibility for the installment payment provision or the occurrence of an accelerating event.

In the case of controversies concerning an estate's eligibility for installment payment of estate tax, the amendment applies to estates of decedents dying after December 31, 1981. In the case of controversies concerning acceleration of unpaid tax, the amendment applies to transactions occurring after December 31, 1981, as they relate to section 6166 as amended by ERTA, sections 6166 or 6166A as they existed before ERTA, or section 6166 as it existed prior to the Tax Reform Act of 1976.

Conference agreement

The conference agreement does not include the Senate amendment.

15. Change to section 6166 "second death" provision (sec. 203 of the Senate amendment and sec. 6166 of the Code)

Present law

If the value of an interest in a closely held business exceeds 35 percent of the adjusted gross estate, estate taxes attributable to the interest may be deferred for up to 14 years (annual interest payments for four years, followed by up to 10 annual installments of principal and interest) (Code sec. 6166). A special four-percent interest rate applies to deferred tax on the first $1 million of value of an interest in a closely held business (sec. 6601(j)).

The remaining unpaid tax balance is accelerated if there is a disposition of a specified fraction of the value of a decedent's interest in the business. The transfer of the decedent's interest in a closely held business from the estate to the decedent's heirs is not considered a disposition, whether or not the interest passes to family members.

For transfers made after 1981, the Economic Recovery Tax Act of 1981 provides that the transfer of an interest in a closely held business from an heir (or subsequent transferee) at the heir's (or subsequent transferee's) death to a family member of the heir (or subsequent transferee) is not considered a disposition.

House bill

No provision.

Senate amendment

The Senate amendment further expands the exception from the acceleration rules for subsequent transfers caused by the death of an heir or subsequent transferee, by eliminating the requirement that the interest in a closely held business must pass to a family member of the heir or subsequent transferee. Under the amendment, any transfer of an interest in a closely held business caused by the death of the heir (or subsequent transferee) is not considered a disposition resulting in acceleration of the unpaid tax.

The provision applies to transfers occurring after 1981.

Conference agreement

The conference agreement does not include the Senate amendment.

16. Annuities for survivors of Tax Court judges (sec. 302 of the Senate amendment and sec. 7448 of the Code)

Present law

Under the survivors annuity plan for U.S. Tax Court judges (Code sec. 7448), the annuity payable to a surviving spouse is equal to a percentage (generally 1¼ percent) of the average annual salary (whether judge's salary or compensation for other allowable Federal service) for the five consecutive years for which the judge received the largest average annual salary, multiplied by the sum of the judge's years of judicial or other allowable Federal service. However, under present law, the annuity for the surviving spouse cannot exceed 37½ percent of such average annual salary. The amount of annuity payable to a surviving dependent is based on the amount payable to a surviving spouse, subject to certain dollar limits.

House bill

No provision.

Senate amendment

The annuity amount payable from the Tax Court survivors annuity fund with respect to a judge dying after the date of enactment generally will be increased by (1) basing such amount upon the judge's average annual salary for the three (rather than five) consecutive years for which the judge received the largest average annual salary, and (2) increasing the maximum annuity for a surviving spouse to 40 percent (rather than 37½ percent) of the judge's average annual salary.

Subject to certain limitations, such annuity amount will also be adjusted for cost-of-living increases by increasing the amount of the annuity when the salary of Tax Court judges is increased. A survivor annuity payable with respect to a judge who rendered some portion of his or her final 18 months of service as a Tax Court judge will be increased by three percent for each five percent by which the salary of the judges is increased. (A salary increase of less than five percent is disregarded in computing increases for current and future annuities.) These cost-of-living adjustment provisions will apply with respect to salary increases taking effect after the date of enactment, except that a survivor annuity in pay status on the date of enactment will be immediately increased to reflect post-1963 salary increases.

Conference agreement

The conference agreement follows the Senate amendment.

17. Modification of certain Tax Court procedural rules (sec. 303 of the Senate amendment and secs. 7447, 7456, 7459, and 7463 of the Code)

Present law

The chief judge of the U.S. Tax Court may assign "small tax cases" (i.e., certain cases in which the deficiency is not more than $5,000) and certain declaratory judgment actions to commissioners (special trial judges) for hearing and decision (Code sec. 7456(c)). Special procedural rules apply to small tax cases (sec. 7463).

The findings of fact and opinion in a Tax Court case must be reported by the judge in writing (sec. 7459).

House bill

No provision.

Senate amendment

The Senate amendment provides that commissioners (special trial judges) may also hear and decide regular cases (i.e., cases that are not small tax cases) if the deficiency is not more than $5,000. In addition, subject to the $5,000 limitation, the category of small tax cases is expanded to include cases involving (1) the excise tax on excess contributions to individual retirement accounts, (2) the excise taxes relating to public charities, private foundations, qualified pension, etc. plans, and real estate investment trusts, and (3) the crude oil windfall profit tax.

The amendment also provides that a Tax Court judge may in appropriate cases orally state, and record in the transcript of the proceedings, the findings of fact or opinion in the case.

Under the amendment, a retired judge of the Tax Court will be designated as a senior judge.

The provision which allows cases involving certain excise taxes to be treated as small tax cases is effective with respect to Tax Court cases begun after the date of enactment. The other provisions are effective on enactment.

Conference agreement

The conference agreement generally follows the Senate amendment, except that the chief judge of the Tax Court may assign any declaratory judgment action under the Internal Revenue Code to a special trial judge for hearing and decision. In addition, the conferees intend that, if findings of fact or opinion are orally stated and are recorded in the transcript of the proceedings, then those pages of the transcript which record the findings (or a written summary of the findings) will be provided to the parties free of any otherwise applicable charges. Also, the transcript of the proceedings (or the written summary) provided to the parties is to include all findings of fact or opinion, not merely the Court's final determination in favor of the taxpayer or the Commissioner.

18. Time for furnishing Form W–2 to terminated employee (sec. 304 of the Senate amendment and sec. 6051 of the Code)

Present law

Present law generally requires an employer to provide an employee with a Form W–2 no later than January 31 of the year following the year in which wages are paid. However, in the case of an employee whose employment terminates during the year, Code section 6051(a) provides that a Form W–2 must be supplied to the employee with the final payment of wages. (Treasury Regulations generally have taken the position that the employer may furnish a Form W–2 to an employee whose employment terminates prior to the close of the calendar year at any time after the termination but not later than January 31 of the following year, except where the employee requests earlier receipt.)

House bill

No provision.

Senate amendment

The Senate amendment requires the employer of an employee whose employment terminates during the year to furnish the employee with a Form W–2 no later than January 31 of the following year, unless the employee requests earlier receipt. If the employee makes a written request for early receipt, then the employer must furnish the Form W–2 no later than 30 days after receipt of the request.

The provision applies to employees whose employment terminates after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

19. Withholding of State income tax from seamen's wages on a voluntary basis (sec. 305 of the Senate amendment and sec. 601 of 46 U.S.C.)

Present law

Present law requires employers to withhold Federal employment taxes from wages paid to employees. Also, employers generally are permitted (and may be required by State law) to withhold State income taxes from wages paid to employees. However, withholding of State income taxes from the wages of seamen or fishermen is prohibited by Federal law (46 U.S.C. sec. 601).

House bill

No provision.

Senate amendment

The Senate amendment provides that a seaman or fisherman employed in the coastwise trade between ports in the same State may enter into a voluntary agreement with employers for withholding from wages of amounts as State income taxes. The provision is effective on enactment.

Conference agreement

The conference agreement follows the Senate amendment.

20. Financing of the Reforestation Trust Fund (sec. 403 of the Senate amendment and sec. 303(b)(1) of P.L. 96–451)

Present law

Receipts from lumber and plywood import duties are appropriated to the Reforestation Trust Fund to supplement appropriations for reforestation and timber stock improvement on publicly owned national forests. The Secretary of the Treasury is required to transfer receipts from these tariffs to the Reforestation Trust Fund in amounts up to $30 million for each fiscal year during the six-year period from October 1, 1979 through September 30, 1985.

For each of fiscal years 1981 through 1985, appropriations have been authorized from the trust fund, but only to the extent these estimated costs exceed amounts appropriated out of the general fund for these purposes.

House bill

No provision.

Senate amendment

Instead of transferring $30 million to the trust fund from lumber and plywood tariff receipts, the Secretary of the Treasury will be required to transfer the same amount from 65 percent of the amounts received from sales of trees or forest products located on National Forest System lands. Existing commitments for uses of these funds will not be affected. The provision takes effect January 1, 1982.

Conference agreement

The conference agreement does not include the Senate amendment.

21. Due date for energy task force study on oil supply disruption (sec. 405 of the Senate amendment)

Present law

An interagency task force is understood to be studying the threat of a petroleum supply disruption on the Nation's economy and ways of limiting the effects of any such disruption. There is no provision in current law, however, which would require this task force to submit a report on its study to the Congress at any particular date.

House bill

No provision.

Senate amendment

The Senate amendment directs the Secretary of the Treasury to submit to the Congress by June 15, 1982, the report of the interagency task force evaluating the alternative fiscal policies which could be used to help mitigate the adverse economic effects of an oil supply disruption. The provision is effective on the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

22. Delay of Bankruptcy Tax Act effective date relating to discharge of indebtedness (sec. 406 of the Senate amendment and sec. 7(a)(2) of the Bankruptcy Tax Act of 1980)

Present law

The Bankruptcy Tax Act of 1980 (P.L. 96–589) was a comprehensive revision of the income tax rules for bankruptcy, insolvency, and debt discharge, following the 1978 repeal by the Congress of the former tax rules.

The 1980 Act provides that no amount is included in gross income by reason of a debt discharge in a bankruptcy case or insolvency. Under the Act, the amount of debt discharge first reduces net operating losses or certain other tax attributes of the debtor company before reducing basis in assets. To provide flexibility, the Act allows the debtor instead first to reduce basis of depreciable property (Code secs. 108, 1017).

In general, the Act's provisions on debt discharge apply to bankruptcy cases beginning after 1980, and to other discharges (outside bankruptcy) occurring after 1980. However, the rule requiring that the amount of debt discharge in bankruptcy or insolvency must first be applied to reduce NOL's, or basis in depreciable assets, was postponed (for one additional year) until bankruptcy cases beginning after 1981 or, in the case of an insolvent debtor outside bankruptcy, where the discharge occurred after 1981.

House bill

No provision.

Senate amendment

The Senate amendment postpones, for an additional three months, the 1980 Act rule relating to the tax consequences of debt discharge in bankruptcy cases or insolvency. Thus, the new rule would apply to bankruptcy cases commencing on or after April 1, 1982, and in the case of a debtor outside bankruptcy which is insolvent at the time of the debt discharge, to debt discharges occurring on or after April 1, 1982.

Conference agreement

The conference agreement does not include the Senate amendment.

23. Amendments to the Mortgage Subsidy Bond Tax Act (sec. 408 of the Senate amendment and secs. 103(b)(4) and 103A(i) of the Code)

Present law

The Mortgage Subsidy Bond Tax Act of 1980 was enacted generally to direct the subsidy from the use of tax-exempt bonds for housing to those individuals who have the greatest need for the subsidy, to increase the efficiency of the subsidy, and to reduce the overall revenue loss to the Federal Government from the use of tax-exempt bonds for housing.

Present law provisions affected by H.R. 4717 are summarized below.

Single-family mortgage bonds

Arbitrage limitations on mortgage investments.—The effective interest rate on mortgages financed with tax-exempt mortgage bonds may not exceed the yield on the issue by more than one (1.0) percentage point.

Loss on reserve liquidations.—The dollar amount of reserves must be reduced as mortgages are paid off, since higher reserves no longer are needed to secure the repayment of debt service on the issue.

Industrial development bonds for multi-family rental projects

Definition of "low or moderate income".—Tax-exempt industrial development bonds may be used for multi-family rental projects only if 20 percent of the units (15 percent in targeted areas) are occupied by individuals of "low or moderate income", as defined in section 8 of the United States Housing Act of 1937.

Duration of targeting requirement.—The 20-percent requirement (15 percent in targeted areas) must be met for 20 years with respect to any obligations issued before January 1, 1984.

House bill

No provision.

Senate amendment

Single-family mortgage bonds

Arbitrage limitations on mortgage investments.—The 1.0 percent limit is replaced by a limit which varies with the size of the issue, beginning at one and one-sixteenth ($1\frac{1}{16}$) percentage points but not to exceed one and one-eighth ($1\frac{1}{8}$) percentage points. The limitation is 1.0625 percentage points plus 0.01 percentage point (not to exceed 1.125 percentage points) for each $10 million that the aggregate face amount of the issue is less than $100 million.

Loss on reserve liquidations.—The rule requiring liquidation of nonmortgage investments with a yield higher than the issue yield will not apply to the extent that it would require disposition of any nonmort-

gage investment resulting in a loss in excess of the amount which could be earned from investments in qualified mortgages. However, the rule will continue to apply if the sale of such nonmortgage investments would not result in a loss when the investments are sold to meet the liquidation rule. Similarly, the rule will apply if loss assets appreciate so that they would not result in such loss.

Industrial development bonds for multi-family rental projects

Definition of "low or moderate income".—The Senate amendment provides a separate definition of "low or moderate income", by adopting the definition of "low or moderate income" under the section 8 program except that the applicable percentage will be 80 percent of area median income (regardless of the percentage used under the section 8 program).

Duration of targeting requirement.—The Senate amendment also provides that the requirement that 20 percent of the rental units (15 percent in targeted areas) must be occupied by individuals of low or moderate income applies from the date that the first unit in the project is occupied and continues until the later of (1) 10 years after one-half of the units in the project are first occupied, (2) a date when 50 percent of the maturity of the bond has been exceeded, or (3) the date on which any section 8 assistance terminates.

Effective date

The provision is effective as if it had been included in the Mortgage Subsidy Bond Tax Act of 1980.

Conference agreement

The provision was deleted from this bill because a similar provision was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

24. Reduction in excise tax on wagers and occupational tax on wagering in States authorizing wagering (sec. 409 of the Senate amendment and secs. 4401 and 4411 of the Code)

Present law

Under present law, a two-percent excise tax is imposed on the amount of wagers which are (1) placed with a person in the business of accepting wagers on the outcome of a sports event or contest, (2) with respect to a sporting event or contest placed in a wagering pool conducted for profit, or (3) placed in a lottery conducted for profit (including the numbers game, policy, and similar types of wagering). The tax applies to "off-track" betting authorized by State law. However, the tax is not imposed on (1) wagers placed with a parimutuel wagering enterprise licensed under State law, (2) wagers placed in coin-operated gaming devices, such as slot machines, or (3) State-conducted wagering, such as sweepstakes and lotteries (Code secs. 4401–4405, 4421–4424).

Under present law, an occupational tax of $500 per year is imposed on each person who is in the business of accepting wagers and on each person who is engaged in receiving wagers for or on behalf of such person (secs. 4411–4414).

House bill

No provision.

Senate amendment

The Senate amendment reduces the two-percent excise tax on certain wagers to 0.25 percent for wagers authorized by State law. Also, under the amendment, the $500 occupational tax is reduced to $50 in the case of persons authorized by State or local law to accept wagers in a wagering business authorized by State law. In States where wagering is illegal, the two-percent excise tax and $500 occupational tax will continue to apply.

The provision applies to taxable periods beginning after 1981.

Conference agreement

The conference agreement follows the Senate amendment, except for the effective dates. Under the conference agreement, the reduction in the excise tax on certain wagers is effective on January 1, 1983, and the reduction in the occupational tax is effective on July 1, 1983.

25. Limitation on use of small issue industrial development bonds (sec. 410 of the Senate amendment and sec. 103(b)(6) of the Code)

Present law

As an exception to the general rule of taxability of interest paid on industrial development bonds, present law provides an exemption for interest on issues of up to $1 million if the proceeds are used for the acquisition, construction, or improvement of land or depreciable property. The limitation may be increased to $10 million for projects where the aggregate amount of outstanding exempt small issues and capital expenditures (financed otherwise than out of the proceeds of an exempt small issue) made over a six-year period does not exceed $10 million (Code sec. 103(b)(6)).

Under present law, there are no restrictions on the types of facilities or purposes for which the proceeds of qualified "small issues" of industrial development bonds may be used, other than the requirement that the proceeds be used for land or depreciable property and not for residential real property for family units. In addition, there are no general requirements for reporting information concerning the issue to the Treasury Department.

House bill

No provision.

Senate amendment

Under the amendment, interest on small issue industrial development bonds is subject to Federal income tax if any portion of the proceeds is to be used for any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), ski resort, racquet sports facility (including handball and racquet ball courts), hot tub facility, suntan facility, or racetrack. The Senate amendment does not affect the present-law exemption of interest on industrial development bonds where the proceeds are used for certain exempt facilities (sec. 103(b)(4)), including sports facilities available on a regular basis for public use.

Also, under the amendment, the issuer of any tax-exempt small issue industrial development bond must report the following to the Treasury: any purchaser of more than 25 percent of the face value of the issue, (2) the underwriter (if any), (3) the interest rate, (4) the issue's rating (if any), (5) the face amount, (6) a description of any facility to be financed from the proceeds of the issue and its location, (7) each user of a facility financed from the proceeds of the issue, (8) bond counsel, and (9) any other information the Treasury determines appropriate.

The provision applies to obligations issued after the date of enactment.

Conference agreement

The provision was deleted from this bill because a similar provision was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

B. Other Provisions

1. Use of certain amounts transferred to State unemployment funds—Reed Act (sec. 201 of the House bill, sec. 501 of the Senate amendment, and sec. 903(c) of the Social Security Act)

Present law

Section 903 of the Social Security Act, commonly referred to as the Reed Act, provides for the transfer of any excess Federal Unemployment Tax Act (FUTA) receipts to the individual State accounts in the unemployment trust fund. Each State's share is proportionate to its share of wages subject to FUTA taxes. Excess funds have accrued only three times since the passage of the Reed Act—in 1956, 1957, and 1958. Current unobligated State Reed Act account balances total some $25 million.

Reed Act funds may be used by the States either to pay unemployment benefits or for administrative purposes. However, under present law, authority to use funds credited in 1956 and 1957 for administrative purposes expired on July 1, 1981; and authority to use funds credited in 1958 for administrative purposes will expire on July 1, 1983.

House bill

The House bill extends for 10 years the authority for States to use Reed Act funds for administrative purposes. Also, the bill permits States that have used such funds to pay unemployment benefits to reestablish a Reed Act account.

Senate amendment

Same as House bill.

Conference agreement

The provision was deleted from this bill because a similar provision was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

2. Removal of age limitation for exclusion from FUTA of wages paid to student interns (sec. 202 of the House bill, sec. 502 of the Senate amendment, and sec. 3306(c)(10)(C) of the Code)

Present law

Under current law, wages paid to a student under age 22 who is enrolled full-time in a work-study or internship program are exempted from the Federal unemployment tax (FUTA) if the work performed is an integral part of the student's academic program (Code sec. 3306 (c)(10)).

House bill

The House bill exempts from FUTA tax any wages paid to student interns, regardless of age, for work that is an integral part of the student's academic program, effective for service performed after the date of enactment.

Senate amendment

Same as House bill.

Conference agreement

The provision was deleted from this bill because a similar provision was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

3. Extension of exclusion from FUTA of wages paid to certain alien farmworkers (sec. 203 of the House bill, sec. 503 of the Senate amendment, and sec. 3306(c)(19) of the Code)

Present law

Under the Immigration and Nationality Act, residents of foreign countries who do not intend to abandon such residency may be admitted to the U.S. to work for a temporary period of time during peak agricultural crop seasons. Prior to 1982, wages paid to such alien farmworkers were excluded from Federal unemployment (FUTA) taxes.

House bill

The House bill extends for two years—from January 1, 1982 to January 1, 1984—the provision of prior law that excluded wages paid to certain alien farmworkers from FUTA taxes.

Senate amendment

Same as House bill.

Conference agreement

The provision was deleted from this bill because a similar provision was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

4. Unemployment benefits paid to ex-Service members (sec. 204 of the House bill and sec. 2405 of P.L. 97–35)

Present law

Section 2405 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35) established new requirements for the payment of benefits to ex-Service members under the Unemployment Compensation for Ex-Service members (UCX) program. Under the new rules, benefits are limited to individuals who (1) have 365 or more days of military service; (2) were discharged or released under honorable conditions; (3) did not resign or voluntarily leave the service (i.e., they were not eligible for reenlistment); and (4) were not released or discharged "for cause" as defined by the Department of Defense. These new requirements apply to individuals who left Federal military service on or after July 1, 1981, but only for weeks of unemployment that began on or after August 13, 1981, the date of enactment of P.L. 97–35.

House bill

The House bill substitutes for the requirements enacted in P.L. 97–35 new Federal unemployment compensation eligibility requirements for individuals separated from the military. The provision (1) limits unemployment benefits to ex-Service members who have served 730 or more continuous days in the military and who have been discharged under other than dishonorable conditions; (2) requires a four-week waiting period between the week in which the individual is separated and the week in which he or she first becomes entitled to compensation; and (3) limits an eligible ex-Service member's benefits to 13 weeks. The provision would be effective for separations on or after July 1, 1981, but only for benefits payable after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modification: Federal unemployment benefits would be payable to unemployed ex-Service members who (1) were separated under honorable conditions (and, in the case of officers, did not resign for the good of the service); and, (2) had completed the first full term of active service they agreed to serve. Ex-Service members who were separated prior to completing their initial term of active service could qualify for unemployment benefits if they were separated under honorable conditions (a) for the convenience of the Government under an early release program, (b) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability, (c) because of hardship, or (d) if they had served for 365 continuous days, because of personality disorders or inaptitude. Also, effective October 1, 1983, current law would be amended to ensure that Federal unemployment benefits paid to ex-Service members would be charged to the Department of Defense in the same manner as Federal benefits paid to former civilian Federal employees are charged to other Federal agencies.

5. Change in SSI accounting period (sec. 205 of the House bill and sec. 1611(c) of the Social Security Act)

Present law

Under the Supplemental Security Income (SSI) law in effect through March 1982, computation of SSI eligibility and amount of benefits are based on the income and resources for the current calendar quarter.

The Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35) requires that, after March 1982, the computation period for determination of eligibility and amount of SSI benefits will be on a monthly basis. Benefits, generally, will be determined on a monthly retrospective basis. That is, the amount of the SSI benefit for any month will be determined on the basis of the individual's or couple's income, resources, and other circumstances in the preceding month. The SSI payment received in June 1982, for example, will not reflect the amount of any other income the recipient had in June; rather, it will reflect the amount of any such income the person received in April.

House bill

Under the House bill, a one-month "prospective" accounting period in SSI is substituted for the "retrospective" accounting period required by P.L. 97–35 to go into effect in April. The provision is effective with respect to months after the first calendar quarter which ends more than two months after the month in which the provision is enacted.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision because the issue was dealt with in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97–248).

6. Treatment of unnegotiated checks under the SSI program (sec. 206 of the House bill and sec. 1631(a)(1)(2) of the Social Security Act)

Present law

More than one-half of the States have agreements with the Social Security Administration to include State-funded supplementation of the Federal SSI benefit in the check issued by the U.S. Treasury. The Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35) amended title XVI (SSI) of the Social Security Act to establish a process for crediting States with their share (included as State supplementation) of benefit checks remaining unnegotiated for more than 180 days. It is not clear whether this legislation applies to SSI checks which are entirely State financed.

Some SSI recipients have social security or other income which exceeds the Federal SSI level, so that they qualify only for a State supplementation of the Federal SSI benefit standard. That is, the benefits in such instances are entirely State financed, even though paid by Treasury check.

House bill

The House bill clarifies the authority to credit States for unnegotiated SSI benefit checks which are "State supplementation only" checks. The provision will be effective on October 1, 1982.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision because a similar provision was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97–248).

7. Collection of administrative costs for non-AFDC child support enforcement (sec. 207 of the House bill and sec. 454(19) of the Social Security Act)

Present law

States are required to provide child support collection services to non-AFDC families requesting assistance. Prior to the Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35), States had the option of charging non-AFDC families a reasonable fee and then retaining a portion of any child support collection to pay for administrative expenses not covered by the fee. Under the Reconciliation Act provisions, States retain the option of charging non-AFDC recipients a reasonable application fee, but are required to charge a fee equal to 10 percent of the support collected. The 10 percent fee must be charged against the absent parent and added to the amount to be collected.

House bill

The House bill repeals the provisions enacted in P.L. 97–35 which would require States, in cases involving non-AFDC families, to charge any absent parent who is obligated to pay child support through the State Child Support Enforcement Agency a fee equal to 10 percent of the child support payment. The House bill restores the law in effect prior to P.L. 97–35 which allows States to charge a reasonable fee for a non-AFDC collection and retain from the amount colletced an amount equal to administrative costs not covered by the fee. The House bill also retains, as a State option, the authority to collect from the parent who owes child or spousal support an amount to cover administrative costs, in addition to the child support payment. The provision is effective as of October 1, 1981.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision because the issue was dealt with in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97–248).

8. Technical amendments to child support enforcement provisions in P.L. 97–35 (sec. 208 of the House bill)

Present law

Several inaccurate references were included in the child support enforcement provisions of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35).

House bill

The House bill makes several technical corrections in the child support enforcement provisions contained in P.L. 97–35, including the correction of inaccurate references. The provision is effective as of October 1, 1981.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision because it was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97–248)

9. Technical amendments to social services and foster care provisions in P.L. 97–35 (sec. 209 of the House bill and secs. 471(a)(10), 1101, 1108, and 2003(b) of the Social Security Act)

Present law

1. The Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35) unintentionally repealed the authority for Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands to finance social services from funds received under the cash assistance titles, and provided that these territories are eligible for funds for social services only under the title XX social services block grant.

2. The formula for allocating funds to the States and territories under the title XX social service block grant program could be interpreted in such a way that a portion of the funds are not available for allocation to any jurisdiction.

3. There are inconsistencies between titles XI and XX of the Social Security Act as to jurisdictions eligible for title XX funds.

4. P.L. 97–35 incorrectly referenced child day care instead of foster care standards in the requirements that States have standards for foster family home or child care institutions under their title IV–E foster care program.

House bill

The House bill makes the following technical corrections:

(1) Restores the option to Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands to utilize funds available under the cash assistance titles for social services.

(2) Insures that all the title XX funds under the ceiling are available for allotment to the States and other jurisdictions.

(3) Makes the title XI definition of the term "State," as it pertains to title XX funding, consistent with the list of jurisdictions cited in title XX as eligible for funds under the allotment formula.

(4) Incorporates into the title IV–E foster care law the same standards for foster care as were previously required by reference to the standards in title XX which were in effect prior to P.L. 97–35.

The provision is effective as of October 1, 1981.

Senate amendment

No provision.

Conference agreement

The conference agreement does include the House provision because similar provisions were included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97–248).

10. One-year extension of existing one-year FUTA exemption for certain fishermen (sec. 402 of the Senate amendment and sec. 3306(c) of the Code)

Present law

Services performed by members of the crew on boats engaged in catching fish or other forms of aquatic animal life are exempt from FICA tax if their remuneration is a share of the boat's catch (or cash proceeds from the sale of a share of the catch) and if the crew of such boat normally is made up of fewer than ten individuals. In addition, the remuneration received by those fishing boat crew members whose services are exempt for purposes of FICA is not considered to be wages for purposes of income tax withholding. Furthermore, the Economic Recovery Tax Act of 1981 (P.L. 97–34) provided that wages paid during 1981 to certain fishing boat crew members who are self-employed for purposes of FICA are not subject to FUTA taxes.

House bill

No provision.

Senate amendment

The Senate amendment extends for one year (through 1982) the FUTA tax exemption for wages paid to fishermen whose remuneration is exempt for purposes of FICA. The provision applies to remuneration paid during 1982.

Conference agreement

The conference agreement follows the Senate amendment.

11. Eligibility requirements for trade adjustment assistance (sec. 404 of the Senate amendment and sec. 2514(a)(2)(A) of P.L. 97–35)

Present law

Under prior law, workers could be certified eligible to apply for benefits under the trade adjustment assistance program if increased imports "contributed importantly" to worker layoffs and production/sales declines of the firm. Pursuant to the Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35) the causation standard was strengthened to require that increased imports be a "substantial cause" of such layoffs and declines, defined as a cause which is "important and not less than any other cause." The new test applied to petitions filed on or after February 9, 1982.

House bill

No provision.

Senate amendment

The Senate amendment amends Public Law 97–35 to restore the "contributed importantly" standard through September 30, 1983, the statutory termination date of the program. The provision is effective on date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

12. Medicare enrollment period for individuals formerly eligible for benefits under the Public Health Service Act (sec. 407 of the Senate amendment and sec. 322(a) of the Public Health Service Act)

Present law

Individuals who voluntarily choose to enroll in the Supplementary Medical Insurance (Part B) portion of the Medicare program may enroll during one of two periods: (1) their initial enrollment period, which is based on the date when such individuals meet the eligibility requirements for enrollment, or (2) during a general enrollment period, during which persons who failed to enroll during their initial period or whose enrollment has been terminated may first enroll or re-enroll. Individuals who elect to enroll after their initial opportunity to do so, or who re-enroll after a termination of coverage, are required (with certain minor exceptions) to pay increased monthly premiums for delinquent enrollment of 10 percent for each 12 months of delay in enrollment or re-enrollment.

House bill

No provision.

Senate amendment

The Senate amendment establishes a special Part B enrollment period from April 1, 1982 through December 31, 1982 for certain individuals (generally elderly merchant seamen) who were formerly eligible for benefits under section 322(a) of the Public Health Services Act (between March 10, 1981 and through September 30, 1981) and who were eligible but not enrolled in the Medicare Part B program. No portion of any period during which such persons were entitled to benefits under the Public Health Service Act counts in determining any increase in monthly premiums for delinquent enrollment. The provision is effective on the date of enactment.

Conference agreement

The provision was deleted from this bill because a similar provision was included in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97–248).

II. ESTIMATED BUDGET EFFECTS

Estimated Budget Effects of H.R. 4717 as Agreed to by the Conference Committee, Fiscal Years 1983–1986

[In millions of dollars]

Provision	1983	1984	1985	1986
A. *Tax Provisions:*				
One-year postponement of effective date for LIFO reserve recapture rule	−56	([2])	([2])	([2])
Modification of net operating loss rule for the Federal National Mortgage Association	−14	+14	--	--
Rollover of gain on FCC-ordered disposition of broadcast property	([1])	([1])	--	--
Expansion of oil shale tax credits	([2])	--	--	--
Annuities for survivors of Tax Court judges (outlays)	([3])	([3])	([3])	([3])
Modification of certain Tax Court procedural rules	--	--	--	--
Furnishing of Form W–2 to terminated employees	--	--	--	--
Withholding of State income tax from seamen's wages	--	--	--	--
Reduction in excise taxes on wagering	−8	−14	−16	−17
Total, tax provisions*	−89	−11	−22	−23
B. *Other Provisions:*				
Unemployment benefits paid to ex-service members (outlays)**	90	70	60	55
Eligibility requirements for trade adjustment assistance (outlays)	([4])	([4])	([4])	([4])
One-year extension of existing FUTA exemption for certain fishermen	([5])	--	--	--

[1] Loss of less than $10,000,000.
[2] Loss of less than $5,000,000.
[3] Increases outlays by less than $50,000.
[4] Increases outlays by indeterminate amount.
[5] Revenue loss of less than $1,000,000.

*For budget scorekeeping purposes, totals include $3 million for each figure shown as "less than $5 million" and $5 million for each figure shown as "less than $10 million."

**Preliminary estimate supplied by the Congressional Budget Office.

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
C. B. RANGEL,
PETE STARK,
HAROLD FORD,
BARBER B. CONABLE,
JOHN J. DUNCAN,
BILL FRENZEL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
MALCOLM WALLOP,
RUSSELL B. LONG,
HARRY F. BYRD, JR.,
Managers on the Part of the Senate.

O